IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Writ Petition No.3453 of 2006

Smt.Sarita Shrikant Mapuskar & ors. Petitioners

Vs.

Shri Rajesh Baliram Mapuskar Respondents

Mr.H.S.S.Murthy with Ms.Sapna Samant for petitioners.

Mr.P.S.Dani for Resp.No.1.

CORAM: B.H.MARLAPALLE,J.

August 01, 2006.

P.C.

. Heard Mr.Murthy, the learned counsel for the petitioners. Rule. Mr.Dani waives service for the respondent - original plaintiff in Regular Suit No.24 of 1995.

. Rule is taken up for hearing forthwith.

. On 21/3/2006 the defendants - the present petitioners placed on record before the trial Court an affidavit of Mr.Shrikant Ramchandra Devlekar, aged about 78 years so as to prove some of the documents at Sr.Nos.1 to 23 under the list of documents at

Exhibit 252 and the plaintiff filed an application at Exhibit 380 objecting to the said evidence being adduced by the defendants. The learned Judge of the trial Court was pleased to allow this application at Exhibit 380 by the impugned order dated 1/4/2006 and thus the defendants have not been permitted to put Mr.Devlekar in the witness box.

. The trial Court noted in the impugned order that there was no pleading by the defendant nos.9 to 12 regarding any document of partition and until and unless there was such a plea the defendants could not place on record any documents and give evidence in support thereof.

. When the plaintiff was in the witness box the list of documents at Exhibit 252 was shown to him and the document at Sr.No.1 under the said list was also shown to him. He identified the signature at Sr.No.1 to be that of Shankar Baliram Mhapuskar. To the subsequent question on behalf of the defendant nos.1 to 3 he also stated "On the said paper there are signatures of Shankar Mhapuskar, Mahadev Mhapuskar and Baliram Mhapuskar". But in the next breath he turned around and said "Whether those signatures

belong to them I do not know". He further went on to say,"On the said paper there are signature as witnesses of Shri A.A Desai, Shri R.A. Devlekar and Dattatray Gopal, but I cannot say those signatures belong to them".

. It is thus clear that there are on record documents at Sr.Nos.1 to 23 under the list at Exhibit 252 and if these documents have been filed by the defendants or any one of them, it is necessary for the trial Court to allow the evidence to be adduced to prove any of them or all of them more so when the plaintiff in the cross-examination has given conflicting replies. The plaintiff has got opportunity to cross-examine the affiant Shrikant Ramchandra Devlekar so that the veracity of his affidavit by way of examination-in-chief is put to test. The approach of the trial Court in passing the impugned order is not in keeping with the legal requirements.

. Hence the petition is allowed and the trial Court shall allow Shri Shrikant Ramchandra Devlekar to enter into the witness box as a witness to prove any or all of the documents at Sr.Nos.1 to 23 below

Exhibit 252 and his evidence will not extend beyond this under any circumstances.

. Rule is made absolute accordingly.

(B.H.MARLAPALLE,J.)